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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 90 of the) PR Docket No. 93-144
Commission's Rules to Facilitate) RM-8117, RM-8030
Future Development of SMR Systems) RM-8029
in the 800 MHz Frequency Band)

and

Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

To: The Commission

JOINT COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.
AND
THE ALLIANCE OF PRIVATE 800/900 MHz LICENSEES

The Industrial Telecommunications Association, Inc. (ITA) and the Alliance of Private 800/900 MHz Licensees (APEL), pursuant to the Federal Communications Commission's Further Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submit these Comments responsive to the Commission's proposal.¹

¹ Further Notice of Proposed Rule Making (FCC 94-271), adopted October 20, 1994, released November 4, 1994, (hereinafter "Further Notice").

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I. PRELIMINARY STATEMENT

1. ITA, formerly the Special Industrial Radio Service Association, Inc. (SIRSA), is an association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 421-430 MHz and 800/900 MHz frequency pools. ITA also coordinates channels from the 800 MHz General Category pool for those entities: (a) eligible to become Industrial/Land Transportation licensees; (b) wishing to expand trunked systems; or (c) consolidating conventional systems into a trunked system. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency pools.

2. ITA enjoys the support of a membership that includes more than 8,600 private land mobile radio communications licensees and the following trade associations:

Alliance of Motion Picture and Television Producers
American Mining Congress
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Aggregates Association
National Food Processors Association
National Propane Gas Association
National Ready-Mixed Concrete Association

National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

3. APEL is an independent membership market council of the Industrial Telecommunications Association, Inc. APEL was formed to provide an instrumentality through which licensees of private user trunked and conventional systems may coordinate efforts to sustain the viability of 800/900 MHz spectrum set aside for private, non-commercial radio systems.

4. The membership of APEL consists of representatives from a number of Fortune 500 companies and other prominent corporations, including:

Airborne Express
All American Pipeline Company
Bell Communications Research
BellSouth Telecommunications
The Boeing Company
Exxon Communications Services Company
Ford Communications, Inc.
Kerr-McGee Corporation
Pacific Bell, and
Phillips Petroleum Company.

II. COMMENTS

5. The instant proceeding focuses largely on regulatory changes designed to accommodate the needs of wide-area and local Specialized Mobile Radio systems that have been statutorily reclassified as "commercial mobile radio services" (also referred to as "CMRS" systems). However, there are also some issues of

critical importance raised in this proceeding that affect the spectrum rights and expectations of non-CMRS systems. ITA and APEL² believe it is imperative for the Commission to recognize that there are legitimate and pressing requirements for spectrum to accommodate the needs of private non-CMRS licensees.

6. Specifically, ITA/APEL are concerned with those aspects of the instant proposal that will affect the continued availability of the radio spectrum in the 800 MHz band for independent, non-entrepreneurial radio systems operated by industrial, land transportation, business and public safety entities. ITA/APEL agree and heartily endorse the Commission's conclusion that "some restriction on future SMR applications on General Category and Pool Channels may be appropriate."³ As the Further Notice observes, "continuing to allow SMR applications for these channels could result in a scarcity of frequencies for PMRS [Private Mobile Radio Service] uses."⁴

7. With the conversion of interconnected SMR systems to the CMRS regulatory framework, it is no longer appropriate to use the available private land mobile spectrum for expansion of these

² For purposes of subsequent references in these comments, the two parties will be variously referred to as either "the Joint Commenters" or "ITA/APEL".

³ Further Notice, paragraph 52.

⁴ Id.

systems. The amendments to Section 90.621(g) proposed by the Commission in the instant proceeding would serve two important purposes: (1) in a concrete and identifiable fashion, they would help to solidify the regulatory distinction between CMRS and non-CMRS services; (2) they would help to ensure that the spectrum previously allocated for private land mobile use at 800 and 900 MHz remains available to accommodate internal-use, private radio systems that are critical to the economic and social welfare of the Nation.

8. Unless the existing rules are changed, SMR systems regulated as CMRS service providers would continue to have access to the Industrial/Land Transportation and Business category channels in the 800 MHz band through the inter-category sharing procedures. These inter-category sharing procedures were appropriate as long as SMR systems were classified as private radio services and so long as they were subject to the inherent restrictions of the 40-mile rule and the channel loading requirements. However, the 40-mile rule and the loading requirements have now been eliminated.⁵

9. Simply stated, the regulatory environment that has resulted from the CMRS changes is incompatible with the rules

⁵ In re Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, GN Docket No. 93-252, adopted August 9, 1994, released September 23, 1994, paragraph 193.

applicable to traditional private services. Under the rules as they now exist, industrial, land transportation and business licensees have to satisfy specific channel loading requirements in order to expand their systems. On the other hand, SMR systems classified as CMRS services would merely have to be constructed and in the process of offering service in order to gain access to the same pool of channels. This rule structure is inequitable and administratively inconsistent insofar as it applies to the inter-category sharing provisions of Part 90.

10. The Joint Commenters believe, however, that the lines drawn by the Commission in its proposal could be adjusted slightly to reflect the fact that a segment of the current SMR licensees may deliberately refrain from offering interconnected service, thereby preserving their private mobile radio status. Typically, such non-interconnected SMR systems operate in a manner fully consistent with the concept of an SMR system originally developed by the FCC in Docket No. 18262.⁶ These non-interconnected SMR systems serve primarily the dispatch-oriented communications requirements of traditional private radio licensees, including industrial, land transportation and business entities. For this reason, it would be appropriate for SMR licensees operating non-CMRS systems to make

⁶ In re Amendment of the Commission's Rules Relative to Operations in the Land Mobile Service Between 806-960 MHz, *Second Report and Order*, Docket No. 18262, 46 F.C.C.2d 752 (1974); reconsidered, *Memorandum Opinion and Order*, 51 F.C.C.2d 945 (1975).

use of the industrial/land transportation and business channels at 800 MHz on an inter-category sharing basis. Given the very limited number of SMR systems operating as PMRS licensees, adjusting the proposed rules in this manner would not jeopardize the continued access of industrial/land transportation and business entities to the 800 MHz channels reserved for their use.

11. As an additional matter, ITA/APEL believe that, in cases where the need for additional industrial, land transportation and business channels in an area arises, any industrial, land transportation and business entity in need of spectrum should have the option of paying to re-tune any CMRS entities that may have gained access to the non-SMR channels through the inter-category sharing provisions. Essentially, this enhancement of the proposed rules would offer a mechanism by which industrial, land transportation and business entities could "reclaim" some of the inter-category channels, if they found a way to accommodate the CMRS licensees through the use of any other SMR category channels that might be available. The Joint Commenters recognize that the re-tuning of SMR systems off of industrial, land transportation and business channels would, as a practical matter, occur only in a very limited number of cases. Nonetheless, in isolated cases, this enhancement could help to alleviate a critical shortage of industrial, land transportation and business channels in a given area. Accordingly, ITA/APEL urge the Commission to include

provisions for such re-tuning in the final rules adopted in this proceeding.

III. CONCLUSION

12. The changes proposed to Section 90.621 would remove the inconsistencies in the inter-category sharing rules and promote rational use and management of the 800 MHz and 900 MHz private land mobile spectrum. Accordingly, for the reasons discussed above, the Joint Commenters urge the Commission to adopt the proposed changes to Section 90.621 relating to the inter-category sharing provisions for the 800 MHz frequency band.

13. ITA/APEL also urge the Commission to refine its proposed rules to accommodate two additional features. First, ITA/APEL believe that the inter-category sharing provisions should be adjusted to permit entities operating SMR systems on a non-CMRS basis to gain access to industrial/land transportation and business channels on an inter-category basis. Second, ITA/APEL urge the Commission to institute provisions for mandatory re-tuning of SMR systems licensed as CMRS providers in those isolated cases where there exists both a shortage of industrial/land transportation and business channels and an abundance of other 800 MHz channels that could be used by the CMRS providers.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. and the Alliance of Private 800/900 MHz Licensees respectfully submit these Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.**

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